

Supreme Court, U.S.
FILED

JUN 11 2018

OFFICE OF THE CLERK

No. _____

IN THE

SUPREME COURT OF THE UNITED STATES

Eullis Monroe Goodwin — PETITIONER
(Your Name)

vs.

UNITED STATES — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

UNITES STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT
(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

Eullis Monroe Goodwin #46370-074
(Your Name)

F.C.I Bennettsville P.O BOX 52020
(Address)

Bennettsville SC 29512
(City, State, Zip Code)

(Phone Number)

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SUPREME COURT, U.S.

QUESTION(S) PRESENTED

1. Did Counsel's Failure to properly develop and present Objections to Petitioner's designation as a career offender, render Ineffective Assistance under Strickland v Washington.
2. Did Counsel Failure to present the District Court with additional sentencing options under USSG§ 3B1.2(a) or 3B1.2(b) rise to the level of deficiency to render counsel ineffective.
3. Did District Court's remarks during change of plea hearing violate Rule 11 Fed.R.Crim.P and violate Petitioners Due Process.

LIST OF PARTIES

- ☒ All parties appear in the caption of the case on the cover page.
- ☐ All parties **do not** appear in the caption of the case on the cover page. A list of all parties to the proceeding in the court whose judgment is the subject of this petition is as follows:

TABLE OF CONTENTS

OPINIONS BELOW	1
JURISDICTION.....	
CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED	
STATEMENT OF THE CASE	
REASONS FOR GRANTING THE WRIT	
CONCLUSION.....	

INDEX TO APPENDICES

APPENDIX A	United States District Court, Order
APPENDIX B	United States Court of Appeals, Order
APPENDIX C	United States Court of Appeals, Order-Rehearing En banc
APPENDIX D	Copy of Edited Plea agreement page
APPENDIX E	
APPENDIX F	

TABLE OF AUTHORITIES CITED

CASES	PAGE NUMBER
Strickland v Washington 466, U.S 686, 104 S.ct	1
Glover v United States 531 U.S 198 203, 121 S.ct	1
Hill v Lockhart 474 U.S, 52 106 S.ct	2
Bordenkircher v Hayes 434, 65, 357 54 L.ED 2d, 604 98 S.ct	2

STATUTES AND RULES

USSG§ 4A1.2(c)(1)

USSG§ 3B1.2(a)

Fed.R.Crim.P Rule 11

OTHER

IN THE
SUPREME COURT OF THE UNITED STATES
PETITION FOR WRIT OF CERTIORARI

Petitioner respectfully prays that a writ of certiorari issue to review the judgment below.

OPINIONS BELOW

☒ For cases from **federal courts**:

The opinion of the United States court of appeals appears at Appendix B to the petition and is

☐ reported at _____; or,
☐ has been designated for publication but is not yet reported; or,
☒ is unpublished.

The opinion of the United States district court appears at Appendix A to the petition and is

☐ reported at _____; or,
☐ has been designated for publication but is not yet reported; or,
☒ is unpublished.

☐ For cases from **state courts**:

The opinion of the highest state court to review the merits appears at Appendix _____ to the petition and is

☐ reported at _____; or,
☐ has been designated for publication but is not yet reported; or,
☐ is unpublished.

The opinion of the _____ court appears at Appendix _____ to the petition and is

☐ reported at _____; or,
☐ has been designated for publication but is not yet reported; or,
☐ is unpublished.

JURISDICTION

☒ For cases from **federal courts**:

The date on which the United States Court of Appeals decided my case was December 20, 2017.

☐ No petition for rehearing was timely filed in my case.

☒ A timely petition for rehearing was denied by the United States Court of Appeals on the following date: March 12 2018, and a copy of the order denying rehearing appears at Appendix C.

☐ An extension of time to file the petition for a writ of certiorari was granted to and including _____ (date) on _____ (date) in Application No. A.

The jurisdiction of this Court is invoked under 28 U. S. C. § 1254(1).

☐ For cases from **state courts**:

The date on which the highest state court decided my case was _____.
A copy of that decision appears at Appendix _____.

☐ A timely petition for rehearing was thereafter denied on the following date: _____, and a copy of the order denying rehearing appears at Appendix _____.

☐ An extension of time to file the petition for a writ of certiorari was granted to and including _____ (date) on _____ (date) in Application No. A.

The jurisdiction of this Court is invoked under 28 U. S. C. § 1257(a).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

Sixth Amendment of the United States Constitution

Fourteenth Amendment of the United States Constitution

USSG§ 4A1.2(e)(1)

USSG§ 3B1.2(a)

USSG§ 3B1.2(b)

STATEMENT OF THE CASE

In June of 2013 Petitioner Mr Eullis M Goodwin was arrested and charged with conspiring to distribute and possess with intent to distribute at least 280 grams of cocain base, in violation of 21 U.S.C §§846 and 841(a)(1),(b)(1)(A). He pleaded guilty to conspiring to distribute at least 28 grams of crack cocain, 21 U.S.C §§846 and 841(a)(1),(b)(1)(A). Petitioner filed a 2255 motion to vacate, set aside or correct sentence, which was denied around May of 2017. Subsequently Petitioner the requested a "C.O.A" Certificate of Appealability with the United States Court of Appeals for the Sixth Circuit, that was denied december 20 2017. Petitioner then filed a Petition fo Rehearing En banc (Rule 35, 40 F.R.A.P) the petition was denied march 12 2018.

REASONS FOR GRANTING THE PETITION

Petitioner Mr Goodwin received Ineffective Assistance of Counsel with respect to his status as a potential career offender.

Standard for Ineffective Assistance of Counsel Claims:

Mr Goodwin was Denied Effective Assistance of Counsel as a result of counsel's failure to propound necessary objection.

Claims of ineffective assistance of counsel must satisfy the two-prong test set out by the Supreme Court in Strickland v Washington, 466 U.S 688, 104 S.ct 2052, 80 L.Ed.2d (1984). The performance prong requires a movant to establish that counsel performed outside the wide range of reasonable professional assistance and made errors so serious that he failed to function as the kind of counsel guaranteed by the Sixth Amendment. The prejudice prong requires a movant to demonstrate that seriously deficient performance of his counsel prejudiced the defense Id. at 687. To meet this standard in the context of plea negotiations and sentencing, the movant must demonstrate a reasonable probability that, but for counsel's errors, he would have received less time in prison. See Glover v United States, 531 U.S 198, 203 121 S.ct 696, 148 L.Ed.2d 604 (2001)

Deficient Performance

Counsel was constitutionally deficient" for failing to object to Petitioners classification as an career offender based on the facts that, his Aggravated Assault and his Accessory to Robbery after the fact were not "violent felonies" under Tennessee state law, further his 1993 Armed Robbery an attempted Murder fell outside the fifteen year time period under USSG§ 4A1.2(e)(1). Counsel's failure to articulate these objections caused Petitioner to be sentenced under career offender guidelines. During the relevant time frame the law establishing that Petitioner was not a career offender was clearly established. The facts of Petitioners prior convictions were known to counsel, or should have been. Minimally competent counsel would have recongnized and presented objections to Petitioners classification as an career offender and argued the same at sentencing. This breach in advocacy falls below the minimum level of competency, demanded of criminal defense and constitute deficient performance under Strickland.

Prejudice

Had counsel properly developed and presented objections to Petitioners classification as a career offender there is a reasonable probability that the Court would have sustained those objections. This finding would have reduced that statutory sentencing parameters, and dramatically reduced the guideline range of imprisonment applicable to Petitioner. Thus counsel's deficient performance described resulted in a longer term of imprisonment and is prejudicial within the meaning of Strickland as applied.

Petitioner Mr Goodwin received Ineffective Assistance of Counsel by counsel's failure to object to, and correct petitioners start date for his participation in the conspiracy.

Deficient Performance

Petitioner through counsel was given the opportunity to make handwritten alterations to the plea, SEE: Attachment D. Changing the duration of stipulated participation in the conspiracy from nine months to two months, also changing stipulated quantity of cocaine base from 196 grams to 84 grams. Counsel was responsible for ensuring these changes were made, presenting the Court with additional sentencing options under USSG§ 3B1.2(a), or 3B1.2(b), which provides a range of adjustments for a defendant who plays a part in committing the offense that makes him substantially less culpable than the average participant in the criminal activity.

Prejudice

The advice Petitioner received was not within the range of competence demanded of attorneys. Counsel's failure to object to and stipulate the plea reflect the applicable adjustments to Petitioner's offense level under USSG§ 3B1.2(a) or 3B1.2(b) which provides for a four to two level decrease, could not "have been the result of reasonable professional judgment" Strickland 466 U.S. at 690. This change in the base offense level would have reduced the guideline range of Imprisonment applicable to Petitioner. Hill v Lockhart 474 U.S., 52, 106 S.Ct. established that counsel offered ineffective/deficient performance if there is a "reasonable probability" that the outcome of the proceedings would have been different.

The District Court violated Rule 11 Fed.R.Crim.P
by participating in Plea Negotiations.

At the September 2014 hearing, Petitioner moved to withdraw his guilty plea, during that hearing District Court Judge Ronnie Greer was in plain Error, when the Court warned Petitioner that, it could impose a sentence far longer than 188 months imprisonment and at one point, explicitly said that it "would not be inclined to impose a bottom of the guideline range sentence". A judge has no business trying to persuade a defendant to accept a plea or WARNING what will happen if he does not accept it. His only function is to make sure that the defendant understands it, knows the sentence possible and that it was entered into freely and knowingly, just as Fed.R.Crim.P Rule 11 provides. The Court's statement that it would not impose a bottom of the guideline range sentence was in violation of Rule 11. "To punish a person because he has done what the law allows him to do is a Due Process Violation" Bordenkircher v Hayes 434, 65, 357 54 L.ED 2d, 604 98 S.Ct.

Petitioner is currently serving an enhanced sentence under the career offender provision, which exceeds the proper advisory guideline range. Petitioner was deprived of his right to effective assistance of counsel guaranteed by the Sixth Amendment to the United States Constitution. Petitioner was deprived of his right to Due Process guaranteed by the Fourteenth Amendment to the U.S Constitution. For the reasons set forth above, Petitioner respectfully request that this court reverse the District Court and Court of Appeals ruling and vacate his sentence.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

Charles M. Aronson

Date: 6/8/2018